



Industrial Telecommunications Association, Inc.

October 7, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, DC 20554

Re: Ex Parte Notification – WT Docket 99-168

Dear Ms. Salas:

This letter is being filed on behalf of the Industrial Telecommunications Association, Inc. (ITA) and Motorola, Inc. (Motorola). On October 4, 1999, Mark Crosby and Laura Smith of ITA, Richard Barth, Dennis Dibos, Wayne Leland, Steve Sharkey, and John Lyons of Motorola, and Michael Lewis of Wiley, Rein & Fielding, met with Kathleen Ham, James Schlichting, Diane Cornell, Susan Kimmel, Ron Netro, Joseph Levin, Amy Zoslov, Mark Bollinger, Diane Conley, Gary Michaels, D'wana Terry, and Ramona Melson of the Wireless Telecommunications Bureau and John Williams and Evan Kwerel from the Office of Plans and Policy. The purpose of the meeting was to discuss the *Notice of Proposed Rule Making* in the above-referenced proceeding.

During this meeting, ITA and Motorola expressed their view that at least 6 MHz of spectrum from the 746-806 MHz allocation should be allocated for private mobile radio use. ITA and Motorola stated that a "band manager" would be one methodology for allocating a portion of this band for private wireless use. As part of their presentation, ITA and Motorola prepared the attached legislative and eligibility analysis.

ITA and Motorola both indicated their willingness to continue to work with the Commission staff to develop an appropriate regulatory structure for the "band manager" concept in order to ensure that at least 6 MHz of spectrum in the 746-806 MHz band is available for private wireless use. Attached are the talking points used at this meeting.

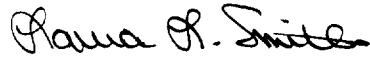
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Please contact me should you have any questions regarding this matter.

Respectfully,

A handwritten signature in cursive script that reads "Laura L. Smith".

Laura L. Smith, Esq.
Executive Director, Government Relations

Attachment
LLS:me

cc: Kathleen Ham
Diane Cornell
Ron Netro
Amy Zoslov
Diane Conley
D'wana Terry
John Williams

James Schlichting
Susan Kimmel
Joseph Levin
Mark Bollinger
Gary Michaels
Ramona Melson
Evan Kwerel

BAND MANAGERS AT 746-806 MHz
LEGISLATIVE AUTHORITY ♦ ELIGIBILITY

Concept: At least 6 MHz of spectrum from the 746-806 MHz “commercial” allocation would be allocated for private mobile radio services (PMRS). Private Wireless “Band Managers” would be allowed to bid on licenses within this service for the fundamental purpose of providing access to spectrum for PMRS radio systems. The PMRS Band Manager would make spectrum available by contract to PMRS users by disaggregating and partitioning the spectrum rights embodied in its license.

Legal Analysis: As demonstrated below, the PMRS Band Manager concept is consistent with the FCC’s legal authority and precedent.

Allocating 746-806 MHz spectrum for PMRS Band Managers is consistent with legislative directives. Section 3004 of the 1997 *Balanced Budget Act* (P.L. 105-33) directed the FCC to allocate 36 MHz of the spectrum between 746 MHz and 806 MHz “for commercial use to be assigned by competitive bidding pursuant to section 309(j).” Neither the statute itself nor the relative conference report language specifically defines the nature of the “commercial” services to be eligible for this allocation. “Commercial use” is not a defined radio service in any part of the Communications Act. Given the context of the legislation, Congress apparently was distinguishing this allocation from the companion 24 MHz allocation for public safety services and directing that it be available to a broader class of users. Furthermore, the activities of the band manager (coordinating access to the spectrum, engineering and data base management and collecting fees/revenue from users) is a commercial activity to be performed on a for-profit basis.

PMRS Band Managers are consistent with the Commission’s spectrum management obligations under Section 332(a) of the Communications Act. Section 332(a) requires that, in taking actions to manage spectrum to be made available for use by private mobile services, the Commission shall consider whether such actions: (1) promote the safety of life and property; (2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and marketplace demands; (3) encourage competition and provide services to the largest feasible number of users; or (4) increase inter-service sharing opportunities between private mobile services and other services.

Use of a Band Manager for private wireless spectrum administration at 746-806 MHz satisfies each of these objectives. In particular, the Band Manager proposal promotes the safety of life and property by establishing a mechanism that allows the spectrum needs of private wireless

users to be addressed in an effective manner. For similar reasons, the proposal promotes efficient use of the spectrum and reduces regulatory burdens on users.

Specifically, the proposal meets these goals by (i) creating an allocation designed to meet the particular needs of the private wireless community; (ii) developing an auction mechanism that minimizes the burden on users and the FCC and permits compliance with Congressional deadlines; (iii) encouraging disaggregation and partitioning as a means for addressing the specific spectrum needs of private entities; and (4) formulating an allocation construct that will allow the spectrum requirements of private users to be addressed more promptly than the traditional licensing process. The proposal also encourages competition in domestic and international markets by facilitating effective and efficient operation of eligible U.S. businesses and industries. Finally, the proposal increases inter-service sharing opportunities by allowing the Band Manager to share its license with a broad range of PMRS eligible entities.

The Band Manager proposal is consistent with the Commission's public interest protection obligations when issuing licenses pursuant to Section 309(a) of the Communications Act.

Section 309(a) requires that the Commission determine, in the case of each license application filed with the agency, whether the public interest, convenience, and necessity will be served by the granting of the application. The selection of band managers to administer private wireless spectrum at 746-806 MHz does not present a situation different from any other licensing question to which Section 309 applies; band managers would be subject to the same procedures and obligations as any other potential licensee. However, when considering the acquisition of spectrum from a spectrum manager by third-party "end users", concerns may arise as to the ability of the Commission to ensure that two specific policy questions are satisfied: (1) the prevention of inter-service interference caused by the unlicensed third-party users, and (2) compliance with the Rules by the third-party unlicensed operators. In both of these instances, however, the proposal offers solutions through the use of private contractual agreements to extend the reach of existing licensee obligations to the end users. To ensure that no inter-service interference occurs, the proposal would require band managers include in their third-party agreements that the end-user complete post-construction proofs of performance prior to system activation. Similarly, to ensure that end users respect the band managers' licensee obligations, and to provide the Commission with enforcement authority that will encompass the unlicensed end users, the proposal contemplates contractual provisions requiring end users to accept FCC oversight and enforcement consistent with the license. To this end, the public interest considerations raised by Section 309 will be protected absent the administrative burden of individually licensing thousands of third-party users.

There is ample notice for the FCC to assign a portion of the 700 MHz spectrum for PMRS Band Managers. At paragraph 15 of the NPRM in the Docket No. 99-168, the FCC solicited comment on whether any portion of the 36 MHz commercial 700 MHz spectrum should be made

available for private mobile services. Citing to the existing proceedings in WT Docket No. 99-87, the NPRM noted that the Commission is considering a new class of licensee called a "Band Manager" and instructed commenters "who are interested in bidding on these bands in order to provide private mobile or private fixed services, functioning as a Band Manager or through some other mechanism, should address the range of issues raised by" the NPRM in Docket 99-87. Commenters such as ITA commented on this portion of the NPRM and these discussions are part of the record in this proceeding. With this level of notice and comment, the FCC could implement the Band Manager concept in the 700 MHz band without necessarily prejudicing the outcome of the general issue in Docket No. 99-87 as it pertains to other, currently existing, PMRS allocations.

Spectrum Issues: Within a 6 MHz allocation of spectrum, two classes of licenses should be available – a 3 MHz (2 x 1.5 MHz) nationwide block and a 3 MHz (2x 1.5 MHz) regional license using the MEA service areas. Given the existence of alternative spectrum options for PMRS users, there should not be a limitation on a party bidding on and acquiring both the nationwide and regional licenses.

Band Manager Eligibility: As proposed in WT Docket No. 99-87, the Band Manager should be the licensee. Operating authority would be extended to end users through private contractual relationships between the Band Manager and the end users. The terms and conditions of these contractual relationships must clarify the fundamental responsibility of the Band Manager and specify that the end user make its facilities available to the Band Manager and the FCC to assist in enforcement activities.

There is no need to impose any ownership or management restrictions on parties proposing to be a PMRS Band Manager license in the 700 MHz band. Competition is furthered by multiple Band Manager licenses being available and through existing PMRS frequency allocations. The expertise of FCC certified frequency coordinating committees and equipment manufacturers to manage shared spectrum access would be invaluable assets as a PMRS Band Manager.

PMRS Band Managers should not be restricted to not-for-profit entities. The market will help regulate the fees charged by the PMRS Band Manager because alternative communications solutions will exist including previously allocated PMRS frequency bands. To fully distinguish PMRS Band Managers from CMRS carriers, the Band Manager should be prohibited from being a telecommunications service provider in the 700 MHz band.